

Appl. No.: 10/005,016
Amdt. Dated December 30, 2003
Reply to Office Action of October 3, 2003

REMARKS/ARGUMENTS

The Examiner has objected to the information disclosure statements filed on December 4, 2001 and May 6, 2002 under 37 C.F.R. 1.98(a)(3) as allegedly failing to include a concise explanation of the relevance of each reference not in the English Language. However, the Applicant does not fully understand the basis underlying the Examiner's objection, as none of the references cited in the information disclosure statements are in a foreign language. In any event, Applicant has confirmed with the Examiner during a telephone conference of December 30, 2003 that the objection was in error and that the above-identified information disclosure statements have been made of record and considered.

Claims 1-21 are currently pending in the present application. Claims 1, 2, 7, 11, 14 and 15 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,181,905 issued to Flam. In addition, the Examiner also rejected claims 1-11, and 13-15 under 35 U.S.C. § 103(a) as allegedly being obvious over Flam. Applicant notes that the Examiner has not set forth a specific rejection of originally-filed claim 12. Claims 16-21 have been allowed.

Claim 1 has been amended to require an adhesive bandage including text markings that specify care instructions for a wound. Claim 11 has been amended to stand as an independent claim and require that the color markings be associated with a temporal parameter, such as a particular day of the week. Claim 22 has been added as a dependent claim to claim 11. Claims 12 and 13 have been amended in a manner consistent with the amendment to claim 11, and newly added claim 22. Claim 2 has been canceled.

The Prior Art Fails to Establish Prima Facie Case of Invalidity

Applicants respectfully request reconsideration of the present application. To establish a prima facie case of obviousness, "the prior art must teach or suggest all the claim limitations." MPEP § 2143; see also MPEP § 2143.03 ('To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.'). Furthermore, the 'teaching or suggestion to

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make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP § 2142.

As amended, Flam does not anticipate or suggest the subject matter claims I or II. Claim 1 requires an adhesive bandage including text markings that specify wound care instructions. Flam discloses a bandage that allows a care worker to monitor the condition of a wound without having to remove the bandage. Rather, the bandage described by Flam includes a wound contacting surface and an indicator that senses the condition of a wound and conveys information (such as pH, moisture level, temperature) about the monitored condition. The indicator comprises a chemically sensitive tape including a series of boxes each of which represent a given condition level, such as a specific range of temperatures or pH levels. In that sense, Flam essentially operates like other medical monitoring or diagnostic equipment, such as a thermometer, which simply reports an observed condition. Moreover, while the indicator described by Flam includes letters associated with each indicator box, these letters, like temperature indicators on a thermometer, merely represent an observed condition level, and do not specify care instructions, such as the desired frequency of changing a bandage, or proscriptive instructions such as "keep wound dry." Accordingly, while the condition indicators of Flam allow a care worker to monitor the condition of a wound and administrator appropriate treatment, the condition indicators do not actually specify the appropriate treatment. Indeed, the condition indicators of Flam require that the health care worker be trained to recognize the appropriate treatment. Unlike the bandage of Flam, the present invention allows untrained medical care personnel, as well as non-medical personnel (e.g., visitors, etc.) to treat the wound appropriately. For example, the indicators of Flam would not explicitly instruct a care provider to keep a wound dry, or change the bandage at a desired frequency. Rather, the indicators of Flam would merely report the condition of a wound, leaving it to the care worker to assume, or learn from other sources, the appropriate wound care protocol.

Furthermore, as to claim 7, the Examiner alleges that the indicator boxes of Flam are capable of receiving text. However, Applicant respectfully points out that the boxes each include chemically sensitive materials that indicate the condition of a wound. Accordingly, allowing care workers to overwrite the boxes with text, especially those of the size contemplated in Flam, would obscure the indicators and defeat the actual purpose of Flam's invention. In addition, Flam does

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not disclose or suggest the addition of written text within the indicator boxes of the bandage.

Lastly, Claim 11 has been amended in a manner consistent with allowed claims 16-21. Specifically, claim 11 requires an adhesive bandage with color markings that are associated with a temporal parameter, such as particular day of the week (see Claim 22). Accordingly, Applicant submits that claims 11-13, and 22 are presently in condition for allowance.

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case.

If the Examiner believes that a telephone conference would expedite prosecution of the present application, the Examiner is invited to call the undersigned at the telephone number set forth below.

Respectfully Submitted,
LAW OFFICE OF MARK J. SPOLYAR
By



Date: December 30, 2003

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